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Before the
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
Washington, D.C. 20554

In re Applications of)	MM Docket No. 93-75
)	
TRINITY BROADCASTING OF)	
FLORIDA, INC.)	File No. BRCT-911001LY
)	
For Renewal of License of)	
Station WHFT(TV) on Channel 45)	
Miami, Florida)	
)	
and)	
)	
GLENDAL E BROADCASTING COMPANY)	File No. BPCT-911227KE
)	
For a Construction Permit for a New)	
Commercial TV Station to Operate on)	
Channel 45, Miami, Florida)	

To: The Commission

PETITION FOR STAY

Trinity Broadcasting of Florida, Inc. ("Trinity") and Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network ("TBN"), pursuant to Section 1.44(e) of the Commission's Rules, hereby petition the Commission for a stay pending appeal of its April 15, 1999 decision ("Decision") which, *inter alia*, denied Trinity's application for renewal of its license for WHFT(TV), Channel 45, Miami, Florida. Trinity and TBN are today filing a notice of appeal with the Court of Appeals for the District of Columbia Circuit, asking the Court to review the Commission's Decision. As demonstrated below, Trinity and TBN (collectively "Petitioners") meet the standards for granting a stay pending the outcome of their judicial appeal.

Initially, there is abundant precedent for the proposition that the Commission will stay the revocation or denial of a renewal of a license until 90 days after the final resolution of any judicial

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review of the Commission's decision. *See, e.g., Contemporary Media, Inc.*, 13 FCC Rcd. 14437 (released June 25, 1998); 13 FCC Rcd. 13549 (released April 22, 1998); *Tri-State Broadcasting Company*, 6 FCC Rcd 2604 (1991); *Harriscopes of Chicago, Inc.*, 5 FCC Rcd. 6383 (1990); *City of New York Municipal Broadcasting System*, 91 FCC2d 635 (1982); *Revocation of the Licenses of PassWord, Inc.*, 76 FCC2d 465 (1980); *West Coast Media, Inc. v. FCC*, 79 FCC2d 610 (1980); *RKO General, Inc. v. FCC*, 78 FCC2d 1 (1980); *Star Stations of Indiana, Inc.*, 51 FCC2d 95 (1975); *Radio Carrollton*, 52 FCC2d 1173 (1975). This precedent recognizes that fundamental fairness and due process require that a licensee be permitted to exhaust its judicial remedies before the administrative death penalty is executed.

Petitioners satisfy the traditional requirements for granting a stay. Under *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), the following factors are considered (1) that appellants are likely to prevail on the merits; (2) that appellants will suffer irreparable harm if a stay is not granted; (3) that other interested parties will not be harmed if the stay is granted; and (4) that the public interest favors grant of the stay. The first factor of the traditional *Virginia Petroleum Jobbers* test was modified in the Circuit's later decision in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977), as follows:

[W]e hold that under *Virginia Petroleum Jobbers* a court, when confronted with a case in which the other three factors strongly favor interim relief may exercise its discretion to grant a stay if the movant has made a substantial case on the merits. The court is not required to find that ultimate success by the movant is a mathematical probability, and indeed, as in this case, may grant a stay even though its own approach may be contrary to movant's view of the merits. The necessary "level" or "degree" of possibility of success will vary according to the court's assessment of the other factors.

The Supreme Court and later cases in the District of Columbia Circuit have also approved the substantial issue test. *See, e.g., Ohio Oil Co. v. Conway*, 279 U.S. 813, 814 (1930); *Population Institute v. McPherson*, 797 F. 2d 1062, 1078 (D.C. Cir. 1986).

This modified test has consistently been applied by the Commission. *See, e.g., Hickory Tech Corporation and Heartland Telecommunications Company of Iowa*, 13 FCC Rcd. 22085, n.9 (released July 1, 1998) (citing *Washington Metropolitan Area Transit Commission v. Holiday Tours, supra*); *Dumont Telephone Company and Universal Communications, Inc.*, 13 FCC Rcd. 17363, n.9 (released June 29, 1998); *Florida Public Service Commission Request for Interpretation of the Applicability of the Limit on Change in Interstate Allocation*, 11 FCC Rcd. 14324, ¶ 3 (1996).

Appellants here have clearly satisfied the requirements for a stay.

1. Appellants Are Likely to Prevail on Appeal; Certainly the Appeal Presents Substantial Questions.

Appellants believe that they are likely to prevail on appeal. As the Commission majority itself recognized “the legal issues involved were not totally free of ambiguity.” Decision, ¶ 101. Under such circumstances, appellants were warranted in relying on the advice of their counsel concerning the interpretation of the Commission’s minority exception to its ownership rules. The Decision of the Commission holding otherwise is incompatible with past Commission precedent, including cases such as *Fox Television Stations, Inc.*, 10 FCC Rcd. 8452 (1995), *on reconsideration*, 11 FCC Rcd. 7773 (1996); *Roy M. Speer*, 11 FCC Rcd 18393 (1996); *John H. Phipps, Inc.*, 11 FCC Rcd. 13053 (1996).

Even if the Commission majority were not persuaded that appellants are likely to prevail on appeal, a stay would still be warranted. As noted above, the Commission has recognized that an order maintaining the status quo is appropriate when a serious legal question is presented, if little harm will result if the stay is granted and denial of the stay would inflict serious harm.

Appellants' appeal clearly presents substantial questions. The Commission's decision was by a bare majority of the Commissioners. Two Commissioners issued a lengthy and forceful dissenting opinion, raising the very objections to the Commission majority decision that appellants will pursue on appeal, and stating:

[W]e think this Order errs in asserting that TBN was on clear notice of the applicability of a *de facto* control showing to its applications. We further believe that the record evidence in this proceeding is not sufficient to prove a specific intent to deceive the Commission. In these circumstances, we find that imposition of the "death penalty" of disqualification is both unfair and unwarranted.

Decision, p. 65. The District of Columbia Circuit has not addressed the issues presented by this appeal, much less rendered a definitive decision of these issues (including the interrelationships among the FCC policies on (a) *de facto* control, (b) the promotion of minority ownership, (c) exemptions from the multiple ownership rules, and (d) control of non-stock entities). The Commission's Decision, particularly its ruling concerning the ability of licensees to rely on the advice of counsel, will affect all Commission licenses. Thus, the Decision not only raises substantial questions, it raises questions of widespread importance. Under these circumstances, a stay is particularly appropriate.

2. Appellants Will Suffer Irreparable Injury If the Stay Is Not Granted.

Trinity has been operating WHFT(TV) continuously since 1980. If a stay is not granted, appellant Trinity will be forced to cease operation of the station. Appellants will therefore suffer

irreparable injury. If the station is forced to cease operation and the order of the Commission is subsequently reversed, it will be extraordinarily difficult for Channel 45 to resume operations. Even more important, appellants will be deprived of the opportunity to operate the station during the period that the appeal is pending. Allowing the Decision to go into effect, thus shutting off this long-time voice, would irreparably harm Trinity and TBN by severing them from their constituents in the Miami market and stifling their expression of religious viewpoints and other speech. As the Supreme Court has observed, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

As the Supreme Court noted long ago in holding that the courts of appeals have power to stay Commission orders under 47 U.S.C. § 402(a): “If the administrative agency has committed errors of law for the correction of which the legislature has provided appropriate resort to the courts, such judicial review would be an idle ceremony if the situation were irreparably changed before the correction could be made.” *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 10 (1942).

3. No Other Interested Party Will Be Adversely Affected If A Stay Is Granted.

No other parties will be harmed by a stay. The only other applicant for Channel 45 is Glendale Broadcasting Company, and it has agreed and filed to dismiss its application without regard to the remaining disposition of this case. Allowing the *status quo ante* to continue until judicial review has been completed will not harm any other interested party.

4. The Public Interest Will Suffer If The Stay Is Denied.

Denial of the stay will also adversely affect the public interest by depriving the public of service on Channel 45 in Miami, and, in particular, by depriving it of the valuable service provided by the appellants. Since 1980, TBF and its network, TBN, have compiled an overwhelming record of meritorious public service, non-entertainment programming and outreach missions that address and meet society's greatest needs, including feeding and clothing the homeless, needy, and poor; fighting drug and alcohol abuse, crime, suicide, and despair through prevention and with counseling and guidance for the needy; and pioneering, before it was ever required by law, extensive outreach programming specifically for children to teach them substantively, spiritually, and morally.¹ The public interest is clearly served by the continuation of this service during judicial review, and would be devastated by its demise. If the order is reversed on appeal, the public will have been deprived of this service while the appeal is pending, and the resumption of future operations will be difficult.

* * *

¹See, e.g., the renewal expectancy findings in *Trinity Broadcasting of Florida, Inc.*, 10 FCC Rcd. 12020, ¶¶ 143-209 (ALJ 1995).

In short, since a serious legal question is presented, no harm will result if a stay is granted, and denial of stay will inflict serious harm, a stay is warranted. *See, pp. 2-3, supra.* As noted, *supra*, (at p. 2), the Commission has traditionally permitted a broadcaster whose license has been revoked or renewal application denied to continue operating its station until 90 days after the final resolution of any judicial review. Petitioners submit that this case is no different from those cited, and the same treatment is warranted here.

Finally, if the Commission believes that expedition of the appeal is appropriate, appellants will join with the Commission in seeking expedited treatment from the Court of Appeals.

WHEREFORE, for the reasons stated above, Petitioners Trinity and TBN urge the Commission to grant a stay of its April 15 Decision until 90 days after a final resolution of the judicial review, including a review by certiorari in the United States Supreme Court.

Respectfully submitted,

**TRINITY BROADCASTING OF FLORIDA,
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SANTA ANA, INC. d/b/a TRINITY
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May 17, 1999

CERTIFICATE OF SERVICE

I, Joan M. Trepal, a secretary in the law firm of Fleischman and Walsh, L.L.P., hereby certify that on this 17th day of May, 1999, copies of the foregoing "Petition For Stay" were sent by first class mail, postage prepaid, to the following:

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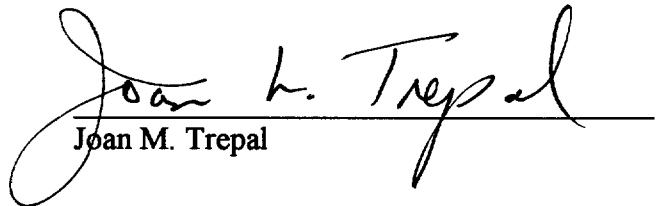
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